

Department of Water Resources

1416 Ninth Street
P.O. Box 942836
Sacramento, CA 94236-001
(916) 653-5791

**Bureau of Reclamation**

Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1098
(916) 979-5000



MAY 4 2004

Ms. Diana Jacobs, Ph.D.
Deputy Director
California Department of Fish and Game
1416 Ninth Street, Room 1205
Sacramento, California 95814

Mr. Michael Aceituno
Area Supervisor
National Marine Fisheries Service
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4706

Mr. Wayne White, Field Supervisor-Ecological Services
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, California 95825

By this letter, the Project Agencies (Department of Water Resources and the Bureau of Reclamation) are requesting concurrence from the CALFED Environmental Water Account Management Agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Department of Fish and Game) regarding continued commitments arising from the CALFED Record of Decision (ROD) to assure no reductions in Central Valley Project (CVP) and State Water Project (SWP) Delta exports, beyond existing regulatory levels, resulting from measures to protect fish under the California and Federal Endangered Species Acts (ROD ESA Commitments). The Project and Management Agencies tentatively agreed on how to use the Environmental Water Account (EWA) and Central Valley Project Improvement Act (CVPIA) 3406(b)(2) assets in the 2004 operations plan.

The CALFED ROD specifies that three tiers of fishery protection assets must be available in order for the CALFED Agencies to provide a commitment that no reductions in the CVP or the SWP Delta exports, beyond existing regulatory levels, will result from measures implemented to protect fish. The Project Agencies believe that hard work and cooperation by everyone involved has generated sufficient assets in all three tiers to merit such commitments. In support of this statement, we provide the following information regarding the status of the three tiers of fishery protection assets.

Tier 1: The Tier 1 regulatory parameters remain in place and are being used to implement fishery measures in the Delta consistent with CALFED ROD. The Project Agencies believe adequate fishery protection can be provided with the (b)(2) assets, in conjunction with EWA assets, in the hydrologic and biological conditions likely to exist this year.

Tier 2: The CALFED ROD identified a funding threshold as the measure of successful implementation for the Multi-Species Conservation Strategy-ERP during Stage 1 of the CALFED program. The funding available this year met the threshold and is being managed by CALFED Agencies. The ERP is functioning. For 2004, the Project Agencies are proposing to employ a combination of storage, purchased and operational assets that will be functionally equivalent to the operational EWA described in the EWA Operating Principles Agreement. This year's EWA funding is about equal to last year's funding. Contracting activities have progressed to the point that purchased assets will be in place this year when needed. An acquisition strategy has been developed to satisfy the requirements for purchased assets. We have enclosed both a summary and the details of the strategy for you to reference. Procedures are in place to allow accumulation of operational assets consistent with the CALFED ROD. In addition, interim protocols for the operation of the EWA have been updated and are enclosed.

The Project Agencies also propose to use the functional equivalency¹ provision to provide for the portion of the stored water that was to be used as collateral for EWA actions. In order to provide the functional equivalent for the stored water asset envisioned in the ROD, DWR is willing in 2004 to allow EWA to carryover up to 100 TAF of debt (water supply expenditures not covered by purchased and operational assets). If annual EWA operations require the use of this capability, the debt taken on by the EWA would be extinguished with operational assets as they become available or as a first priority when purchasing water for the EWA in the following year. DWR made this determination after weighing water supply risks against the overall benefits of having a fully endowed EWA for this year. If similar actions are needed in the future, they will be

¹ The concept of functional equivalency applies to the purchased and stored water assets. The Project Agencies believe that if the necessary purchased or stored water assets cannot be fully provided in any given year, the Project Agencies may choose to augment these assets through functional equivalent operations. The Project Agencies also believe that if such functionally equivalent operations are provided, ROD ESA commitments would be continued, and the water supply liability under Tier 2 for the SWP and CVP would be limited to the amount of water needed to ensure the purchased and stored water assets are provided as defined in Article I, Section 2.e-f of the EWA Operating Principles (as modified by the Interim EWA Protocols).

MAY 4 2004

considered on a case-by-case basis. Coupling this action (carryover of 100 TAF of EWA water supply expenditures) with existing EWA source-shifting agreements will ensure no adverse effects on the San Luis Reservoir low point. This 100 TAF of carryover, together with other EWA purchased and operational assets, define the extent of the EWA.

Tier 3: Tier 3 funds of \$6.25 million are budgeted in Fiscal Year 2003-04 for purchasing assets. Enclosed is a separate protocol that defines when and how Tier 3 operations commence. If needed, Tier 3 funds will be used to purchase unexercised options developed as part of the EWA Tier 2 asset acquisition strategy. Also, Tier 3 funds will be used to purchase water late in the year to the extent such water is needed for Tier 3 and such water is available.

Managing EWA and (b)(2) Assets to Allow Continuation of ROD ESA

Commitments: The Project Agencies' staff continues to review and update hydrologic and operations forecasts to reflect changed conditions and new information. Enclosed are the latest Water Year 2003/2004 EWA Accounting Summary tables based upon the April 1 90 percent and 50 percent exceedance studies. The tables indicate placeholders for EWA actions which are sufficient to meet the objectives identified by the Management Agencies if water supply for the rest of the year is consistent with either the 90 or 50 percent exceedance studies.


In summary, the Project Agencies believe that the assets provided in Tiers 1 and 2 are sufficient and are available to undertake the fishery actions anticipated for the rest of the water year. Furthermore, we have implemented a Tier 3 strategy that meets the requirements of the CALFED ROD.

If you have any questions regarding this letter, please contact Curtis Creel at DWR (916) 574-2722 or Paul Fujitani at Reclamation (916) 979-2197.

Sincerely,



Tom Glover
Deputy Director
Department of Water Resources


for John F. Davis
Deputy Regional Director
Bureau of Reclamation

Enclosures